

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
R. J.'s Late Night Entertainment Corporation	)	File No.: EB-10-DT-0039
	)	NAL/Acct. No.: 201232360002
Licensee of Station WHPR-FM	)	FRN: 0011011509
Highland Park, Michigan	)	Facility ID No. 54428
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted:** October 21, 2011

**Released:** October 24, 2011

By the District Director, Detroit Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order ("NAL"), we find that R.J.'s Late Night Entertainment Corporation ("R.J."), licensee of Non-Commercial Educational ("NCE") Class D Station WHPR-FM, in Highland Park, Michigan (the "Station"), apparently willfully and repeatedly violated: (1) section 11.35(a) of the Commission's Rules ("Rules") by failing to maintain operational EAS equipment; (2) section 73.1690(b)(2) of the Rules for moving the Station's transmitter without Commission authorization; and (3) section 73.3527(b)(1) of the Rules by failing to maintain and make available a local public inspection file.<sup>1</sup> We conclude that R.J. is apparently liable for a forfeiture in the amount of twenty-two thousand dollars (\$22,000). We further direct R.J. to submit a written statement signed under penalty of perjury stating that Station WHPR-FM is now in compliance with sections 11.35(a) and 73.3527(b)(1) of the Rules.

**II. BACKGROUND**

2. On March 8, 2010, in response to two complaints, an agent from the Enforcement Bureau's Detroit Office commenced an investigation into the operation of Station WHPR-FM. Using direction-finding techniques, the agent determined that R.J. was operating Station WHPR-FM from a transmitter location approximately .46 miles (20 Seconds South and 19 Seconds East) from its authorized transmitter location.

3. On March 12, 2010, agents conducted an inspection at Station WHPR-FM's main studio, located at 160 Victor Street in Highland Park, Michigan. During the inspection, agents found that the Station did not have a public inspection file. The agent also observed that the Station had not installed any emergency alert system ("EAS") equipment, though an EAS decoder was found by station staff in a closet.

4. On June 17, 2010, the Detroit Office issued a Letter of Inquiry ("LOI") requesting information regarding Station WHPR-FM's transmitter location, EAS equipment, and public inspection file.<sup>2</sup> On August 3, 2010, the Detroit Office received a reply to the LOI from R.J.'s President.<sup>3</sup> In the LOI

<sup>1</sup> See 47 C.F.R. §§ 11.35(a), 73.1690(b)(2), 73.3527(b)(1).

<sup>2</sup> See Letter of Inquiry from James Bridgewater, District Director, Detroit Office, Northeast Region, to R.J.'s Late Night Entertainment Corporation, dated June 17, 2010 ("LOI").

Response, R.J. explained that they had moved their transmitter in July 2009, and mistakenly believed that the short distance of the move did not require FCC authorization.<sup>4</sup> R.J. further admitted that they did not have the required EAS equipment and that they had not been maintaining a public inspection file since the public library, where they previously maintained their public file, closed "several years ago."

### III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>5</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>6</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>7</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>8</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>9</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>10</sup>

6. **EAS Equipment.** Section 11.35(a) of the Rules states that broadcast stations "are responsible for ensuring that the EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation."<sup>11</sup> Section 11.11(b) of the Rules specifies that Class D NCE stations are only required to install EAS decoders.<sup>12</sup> During the March 12, 2010, inspection, the agent observed that R.J. had not installed the required EAS decoder

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<sup>3</sup> See Letter from Henry Tyler, President, R.J.'s Late Night Entertainment, to James Bridgewater, District Director, Detroit Office, Northeast Region, dated August 3, 2010 ("*LOI Response*").

<sup>4</sup> In the *LOI Response*, R.J. reported that, on June 28, 2010, it filed an application for modification of its licensed facilities to reflect its new transmitter site. See *id.* at 2. The modification application was granted on October 26, 2010 (BPED20100625ADJ), and the license to cover was granted on May 6, 2011 (BPED20110419AAL).

<sup>5</sup> See 47 U.S.C. § 503(b).

<sup>6</sup> See 47 U.S.C. § 312(f)(1).

<sup>7</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . . As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms . . . .").

<sup>8</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*").

<sup>9</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) ("*Callais Cablevision, Inc.*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

<sup>10</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>11</sup> 47 C.F.R. § 11.35(a).

<sup>12</sup> See 47 C.F.R. § 11.11(b).

equipment. In their *LOI Response*, R.J. admitted that WHPR-FM had not installed an EAS decoder, which R.J. acknowledged is required by all Class D NCE stations. Accordingly, we find that R.J. willfully and repeatedly violated section 11.35(a) of the Rules by failing to install an EAS decoder at Station WHPR-FM.

7. **Modification of Transmission Systems.** Section 73.1690(b) of the Rules, in relevant part, states:

The following changes may be made only after the grant of a construction permit application on FCC Form 301 for commercial stations or Form 340 for noncommercial educational stations: . . .

(2) Any change in station geographic coordinates, including coordinate corrections of more than 3 seconds latitude and/or 3 seconds longitude. FM and TV directional stations must also file a construction permit application for any move of the antenna to another tower structure located at the same coordinates.

On March 8, 2010, using direction-finding techniques, an agent from the Detroit Office determined that R.J. was transmitting from a location 20 Seconds South and 19 Seconds East of Station WHPR-FM's authorized location. In their *LOI Response*, R.J. admitted to moving their transmitter to the unauthorized location in July 2009. Although R.J. claimed that it did not believe that prior FCC authorization was required for what it believed was a "minimal" move, we note that it is well established that a violator's lack of knowledge or erroneous beliefs does not excuse the violation nor serve as a mitigating factor warranting a forfeiture reduction.<sup>13</sup> Furthermore, although R.J. has since filed a modification application to reflect its new transmitter site, which the Commission granted in October of last year,<sup>14</sup> this subsequent remedial action does not nullify or excuse the licensee's rule violation.<sup>15</sup> Accordingly, we find that R.J. willfully and repeatedly violated section 73.1690(b)(2) of the Rules by failing to obtain prior FCC authorization to move their transmitter to a new location.

8. **Public Inspection File.** Section 73.3527(a)(2) of the Rules requires non-commercial educational broadcast stations to maintain for public inspection a file containing materials listed in that section.<sup>16</sup> Furthermore, section 73.3527(b)(1) requires that the public file be maintained at the station's main studio, and section 73.3527(c)(1) of the Rules specifies that the file shall be available for public inspection at any time during regular business hours.<sup>17</sup> On March 12, 2010, when agents from the Detroit Office asked to inspect the public inspection file at Station WHPR-FM's main studio during normal business hours, station staff was not able to produce a public inspection file. In their *LOI Response*, R.J. reported that it had not maintained a public file since the public library, where they previously maintained their public file, closed "several years ago." Accordingly, we find that R.J. willfully and repeatedly violated section 73.3527 of the Rules by failing to maintain and make available a local public inspection file.

9. **Proposed Action.** Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for failing to have EAS equipment installed or operational is \$8,000; operation at an unauthorized location is \$4,000; and failing to maintain a public inspection file is

<sup>13</sup> See, e.g., *Kenneth Paul Harris, Sr.*, 15 FCC Rcd 12933, 12935 (Enf. Bur. 2000) (denying a mitigation claim of a broadcast licensee, stating that its ignorance of the law did not excuse the unauthorized transfer of the station); *Maxwell Broadcasting Group, Inc.*, 8 FCC Rcd 784, 784 (MMB 1993) (denying a mitigation claim of a noncommercial broadcast licensee, stating that the excuse of "inadvertent[ce], due to inexperience and ignorance of the rules . . . are not reasons to mitigate a forfeiture" for violation of the advertisement restrictions).

<sup>14</sup> See *supra* note 4.

<sup>15</sup> See, e.g., *Rama Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 18209 (Enf. Bur. 2008).

<sup>16</sup> See 47 C.F.R. § 73.3527(a)(2).

<sup>17</sup> See 47 C.F.R. § 73.3527(b)(1) & (c)(1).

\$10,000.<sup>18</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>19</sup> Applying *the Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that R.J. is apparently liable for a total forfeiture of \$22,000.

10. We also direct R.J. to submit a statement, signed under penalty of perjury by an officer or director of R.J. Late Night Entertainment Corporation, stating that it is currently maintaining a public inspection file that is in full compliance with the requirements under section 73.3527 of the Rules, and that it has installed and is maintaining an EAS decoder as required by section 11.35(a) of the Rules. This statement must be provided to the Detroit Office at the address listed in paragraph 15, *infra*, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204(b), 0.311, 0.314, and 1.80 of the Commission's Rules, R.J.'s Late Night Entertainment Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE AND ORDER** in the amount of twenty-two thousand dollars (\$22,000) for violations of sections 11.35(a), 73.1690(b)(2), and 73.3527(b)(1) of the Rules.<sup>20</sup>

12. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order, R.J.'s Late Night Entertainment Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. **IT IS FURTHER ORDERED** that R.J.'s Late Night Entertainment Corporation **SHALL SUBMIT** a sworn statement as described in paragraph 10 to the Enforcement Bureau Office listed in paragraph 15 within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

14. Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>21</sup> If you have questions, please contact the Financial Operations Group Help

<sup>18</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>19</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>20</sup> See 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 11.35(a), 73.1690(b)(2), 73.3527(b)(1).

<sup>21</sup> See 47 C.F.R. § 1.1914.

Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). If payment is made, R.J.'s Late Night Entertainment Corporation will send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Rules.<sup>22</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan, 48335-1552 and include the NAL/Acct. No. referenced in the caption. In addition, R.J.'s Late Night Entertainment Corporation shall email the written response to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to R.J.'s Late Night Entertainment Corporation at 160 Victor Street, Highland Park, Michigan 48203.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater  
District Director  
Detroit Office  
Northeast Region  
Enforcement Bureau

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<sup>22</sup> See 47 C.F.R. §§ 1.16, 1.80(f)(3).